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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,641	07/01/2003	Cynthia Dianne Maas	19,448	3690
23556	7590	10/24/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			HILL, LAURA C	
401 NORTH LAKE STREET			ART UNIT	PAPER NUMBER
NEENAH, WI 54956			3761	

DATE MAILED: 10/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NIT

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/612,641

Applicant(s)

MAAS ET AL.

Examiner

Laura C. Hill

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached Response to After Final Remarks.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

***Response to After Final Arguments***

Applicant's arguments filed 19 September 2006 have been fully considered but they are not persuasive.

In response to Applicant's arguments that there is no structure in Glaug equivalent to Applicants' elastic bands extend along the second end (see Remarks page 8), Examiner maintains that second elastic 64 extends along the longitudinal second end adjacent element 4 (see page 2 of the final Office action dated 20 June 2006).

In response to Applicant's arguments that Glaug doesn't disclose the first elastic bands 66 extends from the first side edge to the second side edge (see Remarks page 8), the limitations on which the Applicant relies (i.e., first and second elastic bands that extend from the first side edge to the second side edge) are not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Assuming arguendo this limitation is positively recited in the claims, Examiner maintains that Glaug discloses a second elastic 64 which extends from the outermost longitudinal edge to an inner edge over which the elastic is disposed (see Glaug figure 2). Additionally, since Glaug's first elastics 66 extend entirely in a lateral direction across the front and back panel regions respectively via the incorporation by reference, the elastics thus extend from the first outermost side edge adjacent element 66 to an inside second side edge (see pages 2-3 of the final Office action dated 20 June 2006 and figure 2 Glaug).

In response to Applicant's arguments that the first and third elastics of Glaug are not secured to the outer surface of the front and back panels respectively and the second and fourth elastics are secured to the inner surfaces of the front and back panels respectively (see Remarks page 9), Examiner maintains that Glaug discloses first, second, third, and fourth elastics 64,66 are bonded to the inner and outer surfaces of the outer cover 34, respectively (see pages 2-3 of the final action dated 20 June 2006 and Glaug column 6, lines 34-42). It is noted that the claim recitations do not limit the "outer surface" to be interpreted as the outermost surface or back sheet facing the user and the term "inner surface" is not limited to being the body-facing innermost sheet. It is noted that since the Applicant's claim language uses the term "comprising", the Examiner is not precluded from citing art with additional layers.

#### ***Information Disclosure Statement***

The information disclosure statement filed 11 September 2006 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37 CFR 1.97(e) and also because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill  
Examiner  
Art Unit 3761

  
JACQUELINE STEPHENS  
PRIMARY EXAMINER

LCH

